

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

HAROLD J. SMITH and PAMELA SMITH, Husband and)	Civil Action No. _____
Wife,)	
)	
Plaintiffs,)	
)	<u>PLAINTIFFS' ORIGINAL</u>
-against-)	<u>COMPLAINT</u>
)	
VISIONS HOTELS, LLC d/b/a HOLIDAY INN FINGER)	
LAKES REGION, and AUBURN HOTEL VENTURES)	
LLC,)	
)	
Defendants.)	

Plaintiffs, HAROLD J. SMITH and PAMELA SMITH, Husband and Wife, allege as follows, upon information and belief:

I. THE PARTIES

1. That at all times hereinafter mentioned, Plaintiffs, HAROLD J. SMITH and PAMELA SMITH, Husband and Wife, were and still are residents of the State of Florida. They bring this negligence action on their own behalf.

2. That at all times hereinafter mentioned, Defendant VISIONS HOTELS, LLC d/b/a HOLIDAY INN FINGER LAKES REGION (hereinafter referred to as "HOLIDAY INN FINGER LAKES REGION"), was and still is a domestic limited liability company duly organized and existing under and by virtue of the laws of the state of New York, with its principal office located in East Aurora, New York, and at all times material hereto was authorized and was doing business in the state of New York. Defendant may be served with process at its offices at 49 Olean Street, East Aurora, New York, 14052.

3. That at all times hereinafter mentioned, Defendant AUBURN HOTEL VENTURES LLC, was and still is a domestic limited liability company duly organized and existing under and by virtue of the laws of the state of New York, with its principal office located in Corning, New York, and at all times material hereto was authorized and was doing business in the state of New York. Defendant may be served with process at its offices at 11751 East Corning Road, Corning, New York 14830.

II. JURISDICTION AND VENUE

4. The district court has original jurisdiction of this civil action pursuant to 28 U.S.C. § 1332(a). The amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000), exclusive of interest and costs. Plaintiffs HAROLD J. SMITH and PAMELA SMITH, Husband and Wife, are citizens of Florida. Defendant HOLIDAY INN FINGER LAKES REGION is a limited liability company duly organized and existing under the laws of the state of New York and doing business throughout the state of New York. Defendant AUBURN HOTEL VENTURES LLC, is a limited liability company duly organized and existing under the laws of the state of New York and doing business throughout the state of New York.

5. Venue is properly before this Court under 28 U.S.C. § 1391(b)(2), because a substantial part of the events giving rise to this claim occurred in the District, and in the state of New York.

III. BACKGROUND

6. Defendant HOLIDAY INN FINGER LAKES REGION is in the business of providing hotel accommodations under the “Holiday Inn” franchise brand. Defendant AUBURN HOTEL VENTURES LLC, is the owner of the premises where this incident occurred, and upon

information and belief the parent company of Defendant HOLIDAY INN FINGER LAKES REGION.

7. At all relevant times, the location that gave rise to this accident was and is the sidewalk leading from the front entrance to the Holiday Inn Finger Lakes Region located at 75 North Street, in Cayuga County, City of Auburn and state of New York.

8. At all relevant times, the Plaintiffs were lawful invitees and guests at said Holiday Inn premises.

9. That on August 28, 2021 the Plaintiff HAROLD J. SMITH exited the front entrance of the premises and was lawfully walking upon the sidewalk outside the entrance of said premises when he was caused to trip, slip and fall due to a dangerous condition which consisted of the following: leaves, rubbish, and debris left strewn about, flooring materials that became excessively slippery when wet, and the absence of non-slip applications or mats in the area outside the hotel entrance, causing the Plaintiff to sustain severe injuries as herein after set forth, due to the negligence of the Defendants herein. As a result of said injuries, Plaintiff PAMELA SMITH, his Wife, has been caused to expend money for his care and treatment, and has been caused to suffer the loss of society, services, and consortium, all to her detriment.

10. The defendants, at all relevant times, and for many hours prior thereto, knew and/or permitted the sidewalk of said premises to remain in said dangerous condition.

11. The Defendants knew or should have known that said sidewalk was a main thoroughfare for foot traffic for guests and lawful invitees, including the Plaintiff, and that anyone using said sidewalk would be at risk in doing so due to said dangerous conditions.

12. The Defendants, at the time of the accident, negligently permitted the sidewalk and walkways to remain in said dangerous condition and failed to correct the condition. The

Defendants had actual and constructive notice of the condition on the day of the accident. That the Defendants should have known that its failure in such regards would cause harm.

13. Therefore, Plaintiffs bring suit on the following grounds.

**IV. CAUSES OF ACTION: DEFENDANTS HOLIDAY INN FINGER LAKES REGION
AND AUBURN HOTEL VENTURES LLC**

14. On August 28, 2021, Defendant AUBURN HOTEL VENTURES LLC owned the premises commonly known as Holiday Inn Finger Lakes Region, located at or about 75 North Street, in Cayuga County, City of Auburn and state of New York.

15. On August 28, 2021, Defendant AUBURN HOTEL VENTURES LLC owned the walkways located within the premises commonly known as Holiday Inn Finger Lakes Region, located at or about 75 North Street, in Cayuga County, City of Auburn and state of New York.

16. On August 28, 2021, Defendant AUBURN HOTEL VENTURES LLC, by its agents, servants, and/or employees operated the premises commonly known as Holiday Inn Finger Lakes Region, located at or about 75 North Street, in Cayuga County, City of Auburn and state of New York.

17. On August 28, 2021, Defendant AUBURN HOTEL VENTURES LLC, by its agents, servants, and/or employees maintained the walkways within the premises commonly known as Holiday Inn Finger Lakes Region, located at or about 75 North Street, in Cayuga County, City of Auburn and state of New York.

18. On August 28, 2021, Defendant AUBURN HOTEL VENTURES LLC, by its agents, servants, and/or employees managed the walkways within the premises commonly known

as Holiday Inn Finger Lakes Region, located at or about 75 North Street, in Cayuga County, City of Auburn and state of New York.

19. On August 28, 2021, Defendant AUBURN HOTEL VENTURES LLC, by its agents, servants, and/or employees inspected the walkways within the premises commonly known as Holiday Inn Finger Lakes Region, located at or about 75 North Street, in Cayuga County, City of Auburn and state of New York.

20. On and/or before August 28, 2021, Defendant AUBURN HOTEL VENTURES LLC, by its agents, servants, and/or employees repaired the walkways within the premises commonly known as Holiday Inn Finger Lakes Region, located at or about 75 North Street, in Cayuga County, City of Auburn and state of New York.

21. Before August 28, 2021, Defendant AUBURN HOTEL VENTURES LLC, by its agents, servants, and/or employees constructed the walkways within the premises commonly known as Holiday Inn Finger Lakes Region, located at or about 75 North Street, in Cayuga County, City of Auburn and state of New York.

22. On or before August 28, 2021, defendant AUBURN HOTEL VENTURES LLC, by its agents, servants, and/or employees entered in a contract regarding certain maintenance, inspection, and/or repair of a walkway within the premises commonly known as Holiday Inn Finger Lakes Region, located at or about 75 North Street, in Cayuga County, City of Auburn and state of New York.

23. At all times herein mentioned, it was the duty of defendant AUBURN HOTEL VENTURES LLC to maintain the walkways located within the premises commonly known as Holiday Inn Finger Lakes Region, located at or about 75 North Street, in Cayuga County, City of

Auburn and state of New York in a reasonably safe and suitable condition for guests and pedestrians, including but not limited to the Plaintiff herein.

24. On August 28, 2021, Defendant HOLIDAY INN FINGER LAKES REGION, by its agents, servants, and/or employees operated the premises commonly known as Holiday Inn Finger Lakes Region, located at or about 75 North Street, in Cayuga County, City of Auburn and state of New York.

25. On August 28, 2021, Defendant HOLIDAY INN FINGER LAKES REGION, by its agents, servants, and/or employees maintained the walkways within the premises commonly known as Holiday Inn Finger Lakes Region, located at or about 75 North Street, in Cayuga County, City of Auburn and state of New York.

26. On August 28, 2021, Defendant HOLIDAY INN FINGER LAKES REGION, by its agents, servants, and/or employees managed the walkways within the premises commonly known as Holiday Inn Finger Lakes Region, located at or about 75 North Street, in Cayuga County, City of Auburn and state of New York.

27. On August 28, 2021, Defendant HOLIDAY INN FINGER LAKES REGION, by its agents, servants, and/or employees inspected the walkways within the premises commonly known as Holiday Inn Finger Lakes Region, located at or about 75 North Street, in Cayuga County, City of Auburn and state of New York.

28. On and/or before August 28, 2021, Defendant HOLIDAY INN FINGER LAKES REGION, by its agents, servants, and/or employees repaired the walkways within the premises commonly known as Holiday Inn Finger Lakes Region, located at or about 75 North Street, in Cayuga County, City of Auburn and state of New York.

29. Before August 28, 2021, Defendant HOLIDAY INN FINGER LAKES REGION, by its agents, servants, and/or employees constructed the walkways within the premises commonly known as Holiday Inn Finger Lakes Region, located at or about 75 North Street, in Cayuga County, City of Auburn and state of New York.

30. On or before August 28, 2021, Defendant HOLIDAY INN FINGER LAKES REGION, by its agents, servants, and/or employees entered in a contract regarding certain maintenance, inspection, and/or repair of a walkway within the premises commonly known as Holiday Inn Finger Lakes Region, located at or about 75 North Street, in Cayuga County, City of Auburn and state of New York.

31. At all times herein mentioned, it was the duty of Defendant HOLIDAY INN FINGER LAKES REGION to maintain the walkways in a reasonably safe and suitable condition for guests and pedestrians, including but not limited to the plaintiff herein.

32. At all times herein mentioned, it was the duty of Defendant HOLIDAY INN FINGER LAKES REGION to maintain the walkways located within the premises commonly known as Holiday Inn Finger Lakes Region, located at or about 75 North Street, in Cayuga County, City of Auburn and state of New York in a reasonably safe and suitable condition for guests and pedestrians, including but not limited to the plaintiff herein.

33. On August 28, 2021, Plaintiff HAROLD J. SMITH was lawfully traversing a walkway within the premises commonly known as Holiday Inn Finger Lakes Region, located at or about 75 North Street, in Cayuga County, City of Auburn and state of New York.

34. On August 28, 2021, Plaintiff HAROLD J. SMITH was caused to slip and fall due to a dangerous, slick, slippery, uneven, debris-laden condition on Defendants' walkway, thereby sustaining serious personal injuries and damages.

35. Plaintiff HAROLD J. SMITH's injuries and damages referred to herein were caused solely by defendant's negligence, by permitting a dangerous condition within said walkway that defendant knew, or should have known, existed and continued to exist within said walkway and/or by failing to warn plaintiff HAROLD J. SMITH of said dangerous condition.

36. The foregoing incident and resulting serious injuries occurred as a direct result of the negligence and/or recklessness of the defendants, their employees, agents, servants, and/or staff, without any negligence attributable in any measure to the Plaintiff.

37. That this action falls within one or more of the exceptions set forth in Article 16 of the New York CPLR.

V. GENERAL DAMAGES

38. As a direct and proximate result of the Defendants' negligence, Plaintiff HAROLD J. SMITH has suffered damages for personal injuries in an amount in excess of \$75,000.

39. As a further result of Defendants' negligence, Plaintiff HAROLD J. SMITH has suffered damages for past and future medical expenses as he was required to seek and obtain medical care and attention in an effort to cure and alleviate his injuries, and upon information and belief will be compelled to do so in the future.

40. As a further result of the carelessness and negligence of Defendants as aforesaid and the resulting injuries and disabilities suffered by Plaintiff HAROLD J. SMITH, his Wife, Plaintiff PAMELA SMITH been caused to expend money for his care and treatment, and has been caused to suffer the loss of society, services, and consortium, all to her detriment.

VI. PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs HAROLD J. SMITH and PAMELA SMITH, Husband and Wife, requests this Court issue citation to defendants to answer, and upon a trial by jury of this matter, enter judgment against the above-named Defendant for compensatory damages in an amount in excess of \$75,000, together with pre- and post-judgment interest, attorneys' fees, costs and such other and further relief as the Court deems just and equitable.

VII. JURY DEMAND

Plaintiffs hereby demand a jury trial in the within action.

Dated: New York, New York
November 12, 2021

MORGAN & MORGAN NY PLLC

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